No. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
Respondent,

-v-

MICHAEL THOMPSON aka "ICE MIKE,"
Petitioner.

On petition for writ of certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the language "death or serious bodily injury results from" in 21 U.S.C. § 841 creates a strict liability crime, without a foreseeability or proximate cause requirement?

2. Whether a person distributing heroin can be convicted of causing serious bodily injury when his heroin was redistributed to an end user and his original distribution was not the last "but for" cause of the serious bodily injury?

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from a direct appeal to the 5th Circuit Court of Appeals from a criminal prosecution in the Northern District of Texas. Michael Thompson was the defendant/appellant. The United States of America was the plaintiff/prosecutor in the district court, and the plaintiff/appellee in the 5th Circuit.

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

PROCEEDINGS

A. Indictment

On February 14, 2018, a federal grand jury sitting in Lubbock, Texas returned a one-count indictment charging Michael Deon Thompson with Distribution and Possession with Intent to Distribute Heroin Resulting in Serious Bodily Injury, in violation of Title 21 U.S.C.§§841(a)(1), 841(b)(1)(C). App. 17-A. A superseding indictment was returned against Thompson on April 11, 2018, with count one the same as the February indictment and adding an additional count two for Conspiracy to Distribute and Possess with Intent to Distribute Heroin in violation of 21 U.S.C. §846. App. 18-A.

B. Jury Trial

Thompson's two-day jury trial began on May 7, 2018; after an additional trial day on May 8, 2018 the jury returned a verdict of guilty against Thompson on both

counts and found the answer to the special question, "Did the ingestion of Heroin provided to A.M. cause serious bodily injury" to be, "Yes." App. 19-A, 20-A.

C. Sentence and Appeal

On September 5, 2018, Thompson was sentenced to life imprisonment on Count 1 and life imprisonment on Count 2. After filing a successful motion to correct sentence on September 10, 2018, the Court corrected and set the sentence for Count 2 at 41 months. App. 13-A. Thompson timely filed his notice of appeal on September 18, 2018. App. 21-A.

On December 18, 2019, the Fifth Circuit Court of Appeals issued its memorandum opinion affirming the District Court's decision. App. 2-A.

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TREATISES

Petitioner, Michael Thompson, an inmate currently incarcerated at USP Victorville in Adelanto, California by and through Jacob Blizzard, his appointed attorney, respectfully requests this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion by the 5th Circuit affirming Petitioner's conviction is reported as *United States v. Thompson*, 945 F.3d 340 (5th Cir. 2019). That opinion is attached at Appendix ("App.") at 2-A.

JURISDICTION

The 5th Circuit Court of Appeals rendered its decision December 18, 2019. This petition was timely filed. The Supreme Court has certiorari jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

21 U.S.C. § 841(b)(1)(C) states:

> In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $1,000,000 if the defendant is an individual or $5,000,000 if the

> defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of 5 imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.
>
> 21 U.S.C.A. § 841(b)(1)(C).

STATEMENT OF THE CASE

II. Material Facts

On October 6, 2016, Bobby Mason, acting in his frequent role as middleman and using victim, A.M.'s money, purchased heroin from two different suppliers, Michael Thompson and a man named Rico. App. 3-A. Shortly after the purchase, Mason prepared the heroin for use, and according to A.M., Mason injected the heroin into her. *Id.* A.M. testified that, following the injection, she immediately felt bad, ran to the bathroom to throw up, and passed out. App. 4-A. Upon finding A.M. passed out on the bathroom floor, Mason called 911. *Id.* Emergency personnel

arrived and administered Narcan to A.M. and transported her to Hendrick Medical Center. *Id.*

At the hospital, Dr. Dizon, the emergency room doctor, examined A.M. *Id.* Dr. Dizon testified that A.M. suffered serious bodily injury due to her heroin ingestion. *Id.* In addition to the heroin, A.M.'s toxicology report showed a mixture of additional drugs in her system, including methamphetamine, cocaine, and benzodiazepine (Xanax). *Id.*

III. United States Appellate Court Jurisdiction

The 5th Circuit Court of Appeals possessed jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3771(d)(3).

ARGUMENTS & AUTHORITIES ON THOMPSON'S QUESTIONS FOR REVIEW

REASONS FOR GRANTING REVIEW

I. TO ADDRESS THE SPLIT OF DECISIONS DETERMINING WHETHER PROXIMATE CAUSE IS REQUIRED WHERE IT IS NOT EXPLICITLY STATED IN 21 U.S.C. § 841 OR SIMILAR "BUT FOR" CAUSATION CRIMINAL OFFENSES

A. This Court's Guidance in *Burrage* has Largely been Lost by the Courts of Appeals with the Courts Regularly Not Requiring a Finding of Proximate Cause and Interpreting *Burrage* as having not Addressed the Issue.

1. This Court's Review in *Burrage* Shows the Court's Intent to Keep Proximate Cause as the Standard in Criminal Cases

This Court in *Burrage* granted review on two questions:

> Whether the crime of distribution of drugs causing death under 21 U.S.C. §841 is a strict liability crime, without a foreseeability or proximate cause requirement; and

> Whether a person can be convicted for distribution of heroin causing death utilizing jury instructions which allow a conviction when the heroin that was distributed "contributed to," death by "mixed drug intoxication," but was not the sole cause of death of a person.

Burrage v. United States, 569 U.S. 957 (2013). This Court ultimately answered the first question and reversed the Eighth Circuit Court of Appeals holding that:

> at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U. S. C. §841(b)(1)(C) unless such use is a but-for cause of the death or injury.

Burrage v. United States, 571 U.S. 204, 218-19 (2014). Although this Court reinforced the traditional concepts of proximate cause under the common law in its opinion, the Court stated that since it reversed on the "but for"' causation, it need not and did not reach the proximate cause issue. *Id.* at 210. This Court made numerous findings beyond this simple holding. This Court in *Burrage* stated that:

> When a crime requires "not merely conduct but also a specified result of conduct," a defendant generally may not be convicted unless his conduct is "both (1) the actual cause, and (2) the 'legal' cause (often called the 'proximate cause') of the result." 1 W. LaFave, Substantive Criminal Law §6.4(a), pp. 464-466 (2d ed. 2003) (hereinafter LaFave); see also ALI, Model Penal Code §2.03, p. 25 (1985). Those 2 categories roughly coincide with the two questions on which we granted certiorari.

Id. Likewise, this Court referenced the model penal code for guidance in the understanding of criminal statutes. These cites together provide a framework to review and understand criminal statutes.

Despite these guideposts, several Circuit Courts of Appeals, including the 5th Circuit Court of Appeals here, have found that proximate cause is not required to be shown, and further, that this language indicates strict liability is required. The 5th Circuit determined that:

> *Burrage* does not—nor does it purport to—read a proximate cause requirement into § 841(b). . . . Indeed, we have cited *Burrage* in support of the conclusion that "resulted from" language in a guidelines provision "imposes a requirement [only] of actual or but-for causation." *United States v. Ramos-Delgado*, 763 F.3d 398, 401 (5th Cir. 2014).
>
> *United States v. Thompson*, 945 F.3d 340, 346 (5th Cir. 2019).

2. The Circuits are Split as to Whether Proximate Cause is Required to be Shown Where the Statutory Language Reads, "Results From."

The 5th Circuit correctly points out that every Circuit to address the issue in the context of a drug distribution offense has decided no proximate cause is required. However, the 5th Circuit fails to consider those cases cited by Thompson which interpret the same language to not dispense with a proximate cause requirement. *See United States v. Marler*, 756 F.2d 206, 215–16 (1st Cir. 1985) (enhanced punishment is met when the defendant's willful violation of the statute is a "proximate cause" of the victim's death, concluding that proximate cause can be demonstrated where death was the "natural and foreseeable" result of the defendant's conduct); *United States v. Woodlee*, 136 F.3d 1399, 1405 (10th Cir. 1998) (holding that "the bodily injury element of the felony crime is satisfied if injury was a foreseeable result of the" defendants' violation of 18 U.S.C. § 254(b)); *United States v. Harris*, 701 F.2d 1095, 1101 (4th Cir. 1983) (holding that the "if death

results" language of 18 U.S.C. § 241 requires only that death is foreseeable and naturally results from violating the statute); *United States v. Guillette*, 547 F.2d 743, 749 (2d Cir. 1976) (holding that life imprisonment may be imposed if death results from violations of 18 U.S.C. § 241 when the defendant's violation of that statute is a proximate cause of the victim's death); *United States v. Martinez*, 588 F.3d 301, 318 (6th Cir. 2009) ("We therefore conclude that proximate cause is the appropriate standard to apply in determining whether a health care fraud violation 'results in death.'").

Even in *Burkholder*, a case cited by the 5th Circuit, the Court was not unanimous in its belief that no proximate cause was required. *United States v. Burkholder*, 816 F.3d 607, 621 (10th Cir. 2016). Dissenting Justice Briscoe opined that the language cited above from *Burrage* was intended as guideposts for the Courts of Appeals to decide the issue of proximate cause. *Burkholder*, 816 F.3d at 622. Justice Briscoe tracked this language and the language of the model penal code as reasons why he could not agree that proximate cause was not required where this Court recognized that strict liability offenses are both disfavored and provide little protection from limitless application. *Burkholder* at 622-23.

Justice Briscoe also recognized that the Supreme Court has not abandoned background requirements of offenses such as intent and proximate cause, even where such requirements are not explicitly included, and believed that the Supreme Court did not abandon that position in *Burrage*. *Id.* at 624. He ultimately finds that

it is not the clear intent of Congress to create a strict liability offense, and the court is required to find clear intent in order to impose a strict liability offense. *Id.* at 626.

Indeed, other Circuit Courts of Appeals have adopted the use of proximate cause as guided by *Burrage* and *Paroline v. United States*, 572 U.S. 434 (2014). *See United States v. Gonzalez*, 905 F.3d 165 (3d Cir. 2018). The Court applied the same analysis to "results from" language of enhancements to mean that both actual and legal cause were required. *Id.*

B. Because the Fifth Circuit Failed to Recognize the Proximate Cause Requirement of §841(b)(1)(C), it Wrongly Focused its Analysis on the Jury Charge Rather Than Sufficiency of the Evidence to Prove the Offense Itself

This Court in *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979) stated:

> After *Winship*, the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction *must be not simply to determine whether the jury was properly instructed*, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." *Woodby v. INS*, 385 U.S., at 282. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Id. (emphasis added). In Thompson's case, the 5th Circuit Court of Appeals focused its review on the jury instructions, though Thompson did not object to them at trial nor assert error in them on appeal. The 5th Circuit Court of Appeals further found that a challenge to the jury instructions was a prerequisite to a sufficiency of the evidence determination because Thompson did not otherwise have a finding to challenge. *Thompson*, 945 F.3d at 345.

This is an incorrect analysis by the 5th Circuit, as Thompson's argument instead focused on sufficiency of the evidence for the offense charged, not as the jury was instructed, and that the evidence was insufficient because the Government failed to prove that the injury to Myers was foreseeable or proximately caused, regardless of what the jury was instructed. A challenge to the sufficiency of the evidence challenges the sufficiency of the evidence, not the jury charge, because if evidence is legally insufficient the case should not have even been considered by the jury; rather, Thompson's motion for acquittal should have been granted.

II. TO SETTLE AN IMPORTANT ISSUE OF FEDERAL LAW THAT HAS NOT YET BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

A. The Supreme Court should intervene and correct the Fifth Circuit's holding that a conviction for distribution of heroin causing serious bodily injury can be sustained when the Government has failed to prove proximate cause of the serious bodily injury.

1. Absence of Proximate Cause Requirement from Causation Standard Equates to Disfavored Strict Liability Offense

The 5th Circuit has held that proximate cause is not required to be shown under 21 U.S.C. §841(b), effectively imposing a strict liability offense without proximate cause. This issue is of exceptional importance given the dangerous precedent for the punishment of mere contributors whose actions were not foreseeable to cause the harm, while still being a "but for" cause of the serious bodily injury or death. Taking away the legal causation standard leaves a standard that will result in innocent actions becoming violations of law.

Here, the 5th Circuit found that Thompson's conduct met the standard for "but for" causation of serious bodily injury but did not require that it be proven that he was the legal or proximate cause of the serious bodily injury. Given the 5th Circuit's articulated position, future prosecutions remove the "minimal protection against limitless extrapolation of liability without fault" described by Judge Briscoe and the model penal code. *Burkholder* at 623.

In United States v. Jeffries, No. 5:16 CR 180, 2018 U.S. Dist. LEXIS 219134, at *21-23 (N.D. Ohio 2018), the District Court concluding that proximate cause is required, noted several examples where but for causation results in a conviction where proximate cause does not:

> (1) A defendant who distributes drugs to a user who drives while incapacitated by those drugs. The incapacitated user is then hit by a speeding car, which the user clearly would have avoided if not impaired and is killed as a result.
>
> (2) A defendant who distributes drugs to a second drug trafficker, knowing the second trafficker will then redistribute those same drugs to a third drug trafficker, who finally redistributes those same drugs to a user. The user then overdoses and dies.
>
> (3) A defendant who distributes drugs to a buyer who then stores the drugs in a locked drawer; however, the buyer's roommate steals the key to the drawer, consumes the buyer's drugs, and then overdoses as a result.
>
> (4) A defendant sold drugs to a person who dealt drugs for him and that person instead of dealing the drugs as usual consumed them.

See id. The District Court concluded that it could "not simply conclude that Congress—without saying more than it has in § 841(b)(1)(C)—intended these

results, which clearly run contrary to well-established norms of causation in criminal, and in some cases arguably even civil, law." *Id.*

These are telling examples for this Court to consider. Congress did not intend the statute to be as far reaching as these scenarios portray and as happened with Thompson. This interpretation by the District Court stands as one of the lone examples of a court applying proximate causation requirement to drug distribution offenses.

2. Inadequacy of a Sole "but for" Requirement in Causation Standard

As definitively established in *Burrage* and thoroughly explained above, proximate cause should be, and arguably is, part of the causation analysis required of §841(b)(1)(C). However, if this Court chooses to ignore its own precedent and adopt the Circuit Courts' inexplicable refusal to recognize proximate cause as part of the historically held criminal causation standard, it must clarify how to analyze a causation standard that includes only a "but for" requirement because, as it stands, the sole "but for" requirement includes analytical pitfalls.

In *Burrage*, this Court clearly stated that the "results from" language of §841's death enhancement provision means that death or serious bodily injury must result from use of the unlawfully distributed drug, "not from a combination of factors to which drug use merely contributed." *Burrage* at 216. Essentially, *Burrage* added a layer to the analysis. Before the causation standard requiring actual and proximate cause findings is invoked, it must be determined that the distributed

drug did not merely contribute to an already deadly cocktail that then resulted in serious bodily injury or death.

There, this Court held that "at least where use of the drug distributed by the defendant is not an *independently sufficient* cause of the victim's death or serious bodily injury, a defendant *cannot* be liable under the penalty enhancement provision of 21 §841(b)(1)(C) unless such use is a "but for" cause of the death or injury. *Id.* at 218-19. This Court *rejected* the argument that a drug's being a contributing factor to death is enough to satisfy the "but for" cause analysis required of §841(b)(1)(C). *Id.* at 216.

The analysis seems simple enough: where a distributed drug merely "contributes to an aggregate force (such as mixed-drug intoxication) that is itself a but for cause of death," the distributed drug, *without being an independently sufficient cause on its own*, fails to invoke a "but for" analysis. *Burrage* at 215.

The complexity lies in whether the initial mixed-drug intoxication was a "but for" cause of death without the introduction of the distributed drug. This Court, in *Burrage*, pointed out the dilemma posed to doctors, and by extension, to courts, in those situations. There, the doctor testified that the victim's death would have been "very less likely" had he not used the distributed heroin. *Id.* at 218. To that, the Court asked, "is it sufficient that a drug made a victim's death 50 percent more likely? Fifteen percent? Five? . . .Who knows." *Id.* Such speculation invites uncertainty that "cannot be squared with the beyond-a-reasonable-doubt standard" applicable in criminal trials and to criminal laws. *Id.* (citation omitted).

Notably, in *Harden*, the court was certain to point out that the case there was *not* a "mixed toxicity" case. *United States v. Harden*, 893 F.3d 434, 446 (2018). The doctor there testified that the victim's cause of death was "acute heroin intoxication." *Id.* Therefore, the heroin was a "but for" cause, not a mere contributing cause. The analytical pitfall occurs where doctors are called on as experts to retrospectively ascertain how likely it is that an initial mixture of drugs would have caused serious bodily injury or death without the distributed drug. As this Court emphasized in *Burrage*, such uncertainty cannot be reconciled in the criminal context.

Thompson urges this Court to review and remedy the "but for" analytical pitfall intrinsic to mixed drug scenarios that has consistently marred 21 U.S.C. §841(b)(1)(C) and has needlessly resulted in life imprisonment for defendants.

3. The Obvious Ambiguity and Uncertainty Cohering to §841(b)(1)(C) Can and Should Be Extricated Through This Court's Use of Lenity

In *Moskal v. United States*, this Court explained what should happen when the lower courts reach an impasse in statutory interpretation—implement the "rule of lenity." 498 U.S. 103, 107-08 (1990). In *Bifulco v. United States*, this Court defined the "rule of lenity" as a policy meaning that "the Court will not interpret a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." 447 U.S. 381, 387 (1980). Thus, the rule's "touchstone" is "statutory ambiguity," but Justice Scalia, in *United States v. Hansen*, posed the

question: "how much ambiguousness constitutes. . .ambiguity." *Moskal* at 108 (citing *United States v. Hansen*, 249 U.S. App. D.C. 22, 30 (1985) (citations omitted).

Explaining what does not constitute ambiguity, this Court noted that the rule of lenity is not employed merely because, as to a particular statute, "it was *possible* to articulate a construction more narrow than that urged by the Government" or because a division of judicial authority exists. If such occasions prompted the rule's use, the consequence may well be that "one court's unduly narrow reading of a criminal statute would become binding on all other courts, including [the Supreme Court]." *Moskal* at 108.

Rather, lenity is reserved for situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to "the language and structure, legislative history, and motivating policies" of the statute. *Id.*

The statute analyzed here, 21 U.S.C. 841§(b)(1)(C), has reached that specific juncture. Petitioner does not make such an assertion without foundation, for it is a sentiment seemingly shared by this Court and lower courts alike based on recent determinations pursuant to this complex statute. In *Burrage*, this Court concluded that, regarding §841(b)(1)(C), Congress chose to "use language that imports but-for causality." Further, this Court noted that, "[e]specially in the interpretation of a criminal statute subject to the rule of lenity, we cannot give the text a meaning that is different from its ordinary, accepted meaning, and that disfavors the defendant." *Burrage* at 216.

In her concurrence, Justice Ginsburg echoed the same: "But I do agree that 'in the interpretation of a criminal statute subject to the rule of lenity,' where there is room for debate, one should not choose the construction 'that disfavors the defendant.' *Burrage* at 219.

There is room for debate here. Several courts before and after *Burrage* have resorted to analyzing the language, history, and motivating policies of the statute. The cases cited by the 5th Circuit in its opinion here explored the statute through those lenses, demonstrating, without admitting, the ambiguity surrounding the statute.

In *United States v. Webb*, the 11th Circuit, three years before *Burrage*, resorted to surmising Congress's motivating policies. Dispensing with mens rea, even where life imprisonment was a possible end result, the court affirmed the 4th Circuit's reasoning and stated: "Where serious bodily injury or death results from the distribution of certain drugs, Congress has elected to enhance a defendant's sentence *regardless of whether the defendant knew or should have known* that death would result." 655 F.3d 1238, 1251 (11th Cir. 2011) (citing *United States v. Patterson*, 38 F.3d 139 (4th Cir. 1994) (emphasis added)). Such interpretation is far from favorable to any defendant.

In *Harden,* four years after *Burrage*, the court, parroting *Burkholder*, which was decided two years after *Burrage*, resorted to analyzing the language of the statute and Congress's intent:

> The use of the phrase "results from" is noteworthy because "[r]esulting in death and causing death are not equivalents." A

> statute that uses the word "cause" is more readily understood to incorporate the common law requirement of proximate cause, but a statute that uses the term "results from" does not carry the same implication. The absence of proximate-cause language in §841(b) is especially "telling" because there are "numerous instances in which Congress explicitly included proximate cause language in statutory penalty enhancements. (citations omitted) Therefore, "Congress clearly knew how to add a proximate-cause requirement in criminal penalty-enhancement statutes when it wished to do so."

893 F.3d at 438. (citing *Burkholder*, 816 F.3d at 614-15).

Despite the echo chamber of statute interpretation, defense counsels continue to launch meritorious arguments grounded in the causation standard inherent to criminal law, only to be rejected by Circuit Courts that fail to properly consider what *Burrage* plainly outlined. Given the volume of Circuit courts whose opinions and analyses of the statute in question run contrary to *Burrage*, despite their "resorting to" statute analytics, there exists room for debate. Thus, Petitioner urges this Court to review this statute in light of the "rule of lenity" and settle the debate regarding the causation standard in question in favor of Petitioner.

CONCLUSION

For the foregoing reasons, Petitioner requests this Court grant certiorari review of his questions and find that the statutory construction of 21 U.S.C. 841(b)(1)(C) and similarly worded "results from" statutes require proof of proximate cause and clarify that "but for" cause must be sufficiently independent of other contributing causes.

Respectfully submitted,

By: */s/ Jacob Blizzard*
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Court-Appointed Attorney for
Petitioner, Michael Thompson

CERTIFICATE OF MAILING

I certify that the Petition for Certiorari Review was filed with the Court by mailing the petition via United States Mail - first class mail, postage pre-paid and depositing the same into a United States mail receptacle on March 5, 2020.

/s/ Jacob Blizzard
Jacob Blizzard

CERTIFICATE OF SERVICE

I hereby certify that, on or before March 5, 2020, a true and correct copy of this petition was mailed by first-class U.S. mail to:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W.; Room 5616
Washington, DC 20530-0001

Michael Deon Thompson #56861-177
C/O USP Victorville
U.S. Penitentiary
P.O. Box 3900
Adelanto, CA 92301

/s/ Jacob Blizzard
Jacob Blizzard

APPENDIX

1-A

United States Court of Appeals

FIFTH CIRCUIT
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January 09, 2020

Ms. Karen S. Mitchell
Northern District of Texas, Abilene
United States District Court
341 Pine Street
Room 2008
Abilene, TX 79604

No. 18-11224 USA v. Michael Thompson
USDC No. 1:18-CR-9-1

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

cc w/encl:
Mr. Jacob Austin Blizzard
Ms. Gail A. Hayworth
Ms. Leigha Amy Simonton

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
December 18, 2019
Lyle W. Cayce
Clerk

No. 18-11224

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

MICHAEL DEON THOMPSON,
also known as "ICE MIKE"

Defendant - Appellant

Appeal from the United States District Court for the
Northern District of Texas

Before HIGGINBOTHAM, DENNIS, and HO, Circuit Judges.

JAMES L. DENNIS, Circuit Judge:

Michael Deon Thompson was charged with and convicted by a jury of two counts: (1) distribution and possession with intent to distribute heroin resulting in serious bodily injury to April Myers and (2) conspiracy to distribute and possess with intent to distribute heroin. Because of Thompson's prior felony drug convictions, and pursuant to 21 U.S.C. § 841(b)(1)(C), he was sentenced to a mandatory term of life imprisonment. Thompson appeals his conviction and the denial of his motion for a new trial. For the following reasons, we AFFIRM.

I. Background

Michael Thompson was a drug dealer who, from October 2016 to October 2017, sold heroin to Bobby Mason multiple times per week. Mason would at times act as a middleman, connecting customers with Thompson in exchange for extra heroin. On the morning of October 6, 2017, Mason met fellow heroin user April Myers at her house; the two planned on picking up some heroin to use and some to sell. Myers had started her day by taking out cash to purchase the heroin. She also used some of the funds to buy Xanax and hypodermic needles. When she arrived home, she gave her money to Mason who began calling drug dealers to arrange a deal. Mason called Thompson and another supplier, John Carrion, also known as Rico. Myers had never previously met either dealer.

At trial, Mason testified that Thompson arrived first at Myers's residence, pulling up to the front of the home in his Ford SUV. Mason went outside, got into Thompson's vehicle, and bought at least two grams of heroin with Myers's money. Although Myers could not see Thompson, she watched the transaction from her porch to make sure that Mason did not steal any of the heroin.

After completing the transaction, Mason went back inside Myers's home, informed her that he had purchased heroin from Thompson, and proceeded to use a spoon to prepare the heroin for use. At this point, Carrion called Myers's phone, and Mason went outside and purchased around one gram of heroin. Mason returned to the residence and drew the heroin Thompson supplied from the spoon into a syringe. Mason then injected himself with the heroin. Mason testified that Myers next injected herself with the heroin, while Myers testified that Mason injected her. Mason was the only witness with firsthand knowledge that Thompson was the source of the heroin that Myers used that morning.

Immediately after the injection, Myers "knew [she] was in trouble." She "felt out of control" and afraid. Myers headed to her bathroom to throw up, but she collapsed on the bathroom floor, losing consciousness.

Mason called 911 from Myers's cell phone and reported the overdose. He then gathered the remaining heroin and fled from the house. Paramedics later arrived and administered Narcan, a medication that counteracts the effects of a heroin overdose. One paramedic testified that it required about twenty minutes to resuscitate Myers after administering the Narcan.

The paramedics took Myers to a hospital where Dr. Jonathan Dizon, an emergency room physician, examined her. At trial, Dr. Dizon testified that, after reviewing the paramedic's report, he believed that Myers "suffered serious bodily injury . . . from the ingestion of heroin" and that her ingestion of heroin "create[d] a substantial risk of death." Dr. Dizon also stated that a toxicology report based on a sample of Myers's urine found heroin, methamphetamine, cocaine, opiates, and benzodiazepine. He testified that, in his expert opinion, but for Myers's use of heroin, she would not have sustained serious bodily injury.

At trial, the jury was instructed that "[t]o prove that serious bodily injury resulted to April Myers from the use of heroin, the government must prove beyond a reasonable doubt that but for [Myers]'s use of heroin, [Myers] would not have sustained serious bodily injury." During closing argument, Thompson's counsel argued that Mason is a liar and asked the jury not to believe him. After deliberating, the jury found Thompson guilty of both counts. With respect to Count One, the jury specially found "beyond a reasonable doubt, that [April Myers] suffered serious bodily injury as a result of ingesting heroin distributed by Michael Deon Thompson."

Following the verdict, Thompson moved for judgment of acquittal under Federal Rule of Criminal Procedure 29 and for a new trial under Rule 33. The district court denied both motions.

Due to Thompson's prior felony convictions, his conviction under Count One for distribution and possession with intent to distribute heroin resulting in serious bodily injury mandated a sentence of life imprisonment. 21 U.S.C. § 841(b)(1)(C);[1] Thompson was also sentenced to 41 months' imprisonment on the related conspiracy charge. He timely appealed.

II. Standard of Review

When a challenge to the sufficiency of the evidence is preserved by moving for acquittal under Federal Rule of Criminal Procedure 29, the challenge is reviewed *de novo* but with a high degree of deference to the verdict. *See United States v. Scott*, 892 F.3d 791, 796 (5th Cir. 2018). All evidence is viewed "in the light most favorable to the Government, with all reasonable inferences and credibility choices to be made in support of the jury's verdict." *Id.* (internal quotation marks omitted). In addition, evidence on an essential element of an offense is sufficient "if *any* rational trier of fact could have found" that element beyond a reasonable doubt. *Id.* (internal quotation marks and citation omitted).

"[T]he decision to grant or deny a motion for new trial based on the weight of the evidence is within the sound discretion of the trial court. An appellate court may reverse only if it finds the decision to be a clear abuse of

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[1] The statute provides in pertinent part:

> If any person commits such a [controlled substances] violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and *if* death or *serious bodily injury results from* the use of such substance shall be sentenced to life imprisonment . . . .

21 U.S.C. § 841(b)(1)(C) (emphasis added).

discretion." *United States v. Robertson*, 110 F.3d 1113, 1118 (5th Cir. 1997) (internal quotation marks omitted).

III. Discussion

Thompson contends on appeal that (1) the evidence was insufficient to find that the heroin he supplied was the but-for cause of Myers's serious bodily injury, (2) the Government was required to prove that his distribution was the legal or proximate cause of Myers's injury under § 841(b)(1)(C), and (3) the district court abused its discretion in denying his motion for a new trial.

A. Sufficiency of the Evidence on But-For Causation

"[A]t least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C) unless such use is a but-for cause of the death or injury." *Burrage v. United States*, 571 U.S. 204, 218-19 (2014). "But-for causation requires the Government to show merely that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct." *United States v. Salinas*, 918 F.3d 463, 466 (5th Cir. 2019) (internal quotation marks and citation omitted). The standard is not difficult to meet because it "asks simply whether the outcome would have occurred in the absence of the action." *Id.* Thus, there may be many but-for causes of any given event. *Id.*

The Supreme Court in *Burrage* held that the defendant's distribution of heroin to a person who died of a drug overdose was not a but-for cause of the death because the victim had ingested so many other drugs that no expert could testify that, but for the heroin, the victim would have lived. 571 U.S. at 207-08. On the other hand, a drug distributed by a defendant may be a but-for or "actual" cause of death or injury if other drugs in a victim's system would not have caused the victim's harm without the addition of the defendant's drug. *See id.* at 210, 217-18.

We conclude sufficient evidence existed to support the jury's finding of but-for causation here. Dr. Dizon, the emergency room physician who treated Myers, testified explicitly that he believed that but-for Myers's use of heroin, she would not have sustained serious bodily injury.[2] Also, the testimony of Mason, Myers, and the paramedic establish a clear timeline that points to heroin as a but-for cause of Myers's injury. Myers collapsed nearly immediately after she injected the heroin and then regained consciousness shortly after being administered Narcan. This all suggests that without ingesting the heroin Thompson supplied, Myers would not have suffered serious bodily injury.

Thompson argues that the evidence was insufficient to establish but-for causation because he distributed heroin to Mason, rather than Myers, and because Mason ultimately chose the heroin injected into Myers. However, there is no requirement that Thompson directly distribute the drugs to the end-user or that Thompson be the final link in the causal chain. *See, e.g.*, *United States v. Soler*, 275 F.3d 146, 149, 152-53 (1st Cir. 2002) (finding but-for causation standard met even though defendant-appellant had no direct dealings with the victim); *United States v. McIntosh*, 236 F.3d 968, 973 (8th Cir. 2001), *abrogated on other grounds by Burrage*, 571 U.S. 204 ("The enhancement inquiry [under § 841] is not altered merely because . . . [the victim] obtained the drug directly from someone other than McIntosh."). Because there may be "many but-for causes," we likewise find no merit in Thompson's argument that the heroin had to be the "only" cause of Myers's injuries. *See Salinas*, 918 F.3d at 466 (internal quotation marks omitted).

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[2] Thompson asserts that Dr. Dizon's trial testimony was improper. However, Thompson failed to object to Dr. Dizon's expert testimony at trial, and we discern no plain error in the district court's allowing that testimony into evidence. *See United States v. Cotton*, 535 U.S. 625, 631 (2002).

Therefore, we cannot say that no rational juror could find the but-for causation standard met based on the testimony and evidence adduced at trial. *Scott*, 892 F.3d at 897.

B. Causation Standard Under Count One

On appeal, Thompson argues that, in addition to but-for causation, the charge under Count One for distributing heroin which resulted in serious bodily injury required the Government to prove that his conduct proximately caused Myers's injury.[3] *See* 21 U.S.C. § 841(b)(1)(C). At trial, the jury was instructed that they had to find but-for causation to convict Thompson on Count One. No mention was made of proximate cause, and Thompson's counsel did not object.

Because of trial counsel's failure to object, we apply plain-error review. *See Cotton*, 535 U.S. at 631. Under this standard, we can only notice "(1) [an] error, (2) that is plain, and (3) that affect[s] substantial rights . . . [when] (4) the error seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Id.* (internal quotation marks and citations omitted) (second and last alterations in original). Even assuming *arguendo* that the district court erred, Thompson cannot show—and does not argue—that the error was plain. "[E]very federal court of appeals to address th[e] issue" of whether § 841(b) demands proof of proximate causation has determined that the provision entails no such requirement. *United States v. Harden*, 893 F.3d 434, 447-48 (7th Cir. 2018) (collecting cases), *cert. denied*, 139 S. Ct. 394, 202 (2018); *see also United States v. Burkholder*, 816 F.3d 607, 618 (10th Cir. 2016);

[3] Thompson further contends that there was insufficient evidence to prove that the proximate cause standard was met. Of course, the jury was never instructed to find whether Thompson's drug distribution proximately caused Myers's injury, and thus there is no jury finding to challenge. Moreover, we need not reach this issue because we determine that Thompson cannot satisfy the predicate showing of plain error in the failure to instruct the jury on a requirement of proximate cause.

United States v. Webb, 655 F.3d 1238, 1250 (11th Cir. 2011); *United States v. De La Cruz*, 514 F.3d 121, 137 (1st Cir. 2008); *United States v. Houston*, 406 F.3d 1121, 1124-25 (9th Cir. 2005); *United States v. Robinson*, 167 F.3d 824, 832 (3d Cir. 1999); *United States v. Patterson*, 38 F.3d 139, 145 (4th Cir. 1994). Although we have not squarely answered this question, in *United States v. Carbajal*, we suggested in dicta that § 841(b) "does not impose any sort of explicit causation requirement" and held that U.S.S.G. § 2D1.1, the Sentencing Guidelines provision analogous to § 841(b), "is a strict liability provision that applies without regard for common law principles of proximate cause or reasonable foreseeability." 290 F.3d 277, 284 (5th Cir. 2002); *see also* U.S. SENTENCING GUIDELINES MANUAL § 2D1.1 (stating that the provision applies if "death or seriously bodily injury resulted from the use of the substance").

Thompson claims that *Burrage* requires proximate cause be proven under the "death or serious bodily injury results" language in § 841(b). He misreads *Burrage*, and his own citations to the case evidence that the Court merely observed that, *in general*, the criminal law imposes a requirement that the defendant's conduct be the proximate cause of the result. *See Burrage*, 571 U.S. at 210. *Burrage* does not—nor does it purport to—read a proximate cause requirement into § 841(b). *See id.* at 218-19 ("We hold that, at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C) unless such use is a *but-for* cause of the death or injury." (emphasis added)). Indeed, we have cited *Burrage* in support of the conclusion that "resulted from" language in a guidelines provision "imposes a requirement [only] of actual or but-for causation." *United States v. Ramos-Delgado*, 763 F.3d 398, 401 (5th Cir. 2014). Given the overwhelming weight of authority, any asserted error by the district court in failing to instruct the jury that proximate cause is an

element of the offense under Count One certainly is not "clear" or "obvious," and Thompson, therefore, cannot meet the exacting standards of plain-error review. *See United States v. Olano*, 507 U.S. 725, 734 (1993) ("'Plain' is synonymous with 'clear' or, equivalently, 'obvious.'").

C. Thompson's Motion for a New Trial

Thompson next challenges the denial of his motion for a new trial, contending that the Government's key witness, Mason, was unreliable and incredible. A district court may grant a motion for a new trial "if the interest of justice so requires." FED. R. CRIM. P. 33(a). We may reverse the district court's decision to deny Thompson's motion for a new trial only if we find it "to be a clear abuse of discretion." *United States v. Robertson*, 110 F.3d 1113, 1118 (5th Cir. 1997) (internal quotation marks and citation omitted). "Testimony is incredible as a matter of law only if it relates to facts that the witness could not possibly have observed or to events which could not have occurred under the laws of nature." *Id.* at 797 (internal quotation marks and citation omitted). "Where the defense has had an opportunity to question witnesses as to their biases, and the jury has concluded that the witnesses are credible, the trial court has broad discretion" in ruling on a motion for a new trial. *United States v. Dula*, 989 F.2d 772, 778 (5th Cir. 1993). Here, the defense vigorously cross-examined Mason, questioning his credibility and exposing his incentives to testify for the Government. Moreover, it was solely the jury's province "to weigh conflicting evidence and evaluate the credibility of witnesses." *Id.* (internal quotation marks omitted) (quoting *United States v. Ivey*, 949 F.2d 759, 767 (5th Cir. 1991)). Thompson essentially asks us to reevaluate Mason's credibility—a request we decline. *See id.* at 778; *see also United States v. Arnold*, 416 F.3d 349, 361 (5th Cir. 2005) (declining to review the district court's assessment of the credibility of witnesses).

IV. Conclusion

For these reasons, the judgment of the district court is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
December 18, 2019
Lyle W. Cayce
Clerk

No. 18-11224

D.C. Docket No. 1:18-CR-9-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

MICHAEL DEON THOMPSON, also known as Ice Mike,

Defendant - Appellant

Appeal from the United States District Court for the
Northern District of Texas

Before HIGGINBOTHAM, DENNIS, and HO, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is affirmed.

Certified as a true copy and issued as the mandate on Jan 09, 2020

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

13-A

United States District Court
Northern District of Texas
Abilene Division

UNITED STATES OF AMERICA

v.

MICHAEL DEON THOMPSON
Defendant.

Case Number: 1:18-CR-00009-C(01)
USM No. 56861-177

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

DATE OF ORIGINAL JUDGMENT: September 5, 2018.

REASON FOR AMENDMENT: **Upon motion of the Defendant to Correct Sentence Under Federal Rule of Criminal Procedure 35(a) as shown on page 2 of the Judgment.**

The defendant, MICHAEL DEON THOMPSON, was represented by Jeffrey A. Propst.

The defendant was found guilty by jury trial on May 8, 2018, of counts 1 and 2 of the superseding indictment filed April 11, 2018. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section	Nature of Offense	Date of Offense	Count Number
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Distribution and Possession With Intent To Distribute Heroin Resulting In Serious Bodily Injury	10/06/2017	1
21 U.S.C. § 846 [21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)]	Conspiracy To Distribute and Possess With Intent To Distribute Heroin	10/06/2017	2

As pronounced on September 5, 2018, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $200.00, for counts 1 and 2 of the superseding indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in the defendant's economic circumstances.

Signed this the 18th day of September, 2018.

SENIOR DISTRICT JUDGE SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

DEFENDANT: MICHAEL DEON THOMPSON
CASE NUMBER: 1:18-CR-00009-C(01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Life as to count 1; and 41 months as to count 2 with the terms to run consecutive with each other; and to run consecutive with any sentence imposed in Case No. 21,165-B pending in the 104th District Court, Taylor County, Texas.

The defendant shall remain in the custody of the U.S. Marshal Service.

The Court recommends incarceration at USP Victorville, California.

RETURN

I have executed this judgment as follows:

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL DEON THOMPSON
CASE NUMBER: 1:18-CR-00009-C(01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 6 years as to count 1; and 6 years as to count 2 to run concurrent with each other.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- ☐ The defendant shall participate in an approved program for domestic violence.
- ☐ The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MICHAEL DEON THOMPSON
CASE NUMBER: 1:18-CR-00009-C(01)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.

2. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least $20.00 per month.

3. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least $20.00 per month.

17-A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL DEON THOMPSON
a/k/a "Ice Mike"

No. 1-18CR-009-C

INDICTMENT

The Grand Jury Charges:

Count One
Distribution and Possession with Intent to Distribute
Heroin Resulting in Serious Bodily Injury
(Violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C))

On or about October 6, 2017, in the Abilene Division of the Northern District of Texas, and elsewhere, **Michael Deon Thompson**, a/k/a "Ice Mike," defendant, did intentionally and knowingly distribute and possess with intent to distribute a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance which resulted in serious bodily injury to A.M. from the use of said heroin.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

THE UNITED STATES OF AMERICA

v.

MICHAEL DEON THOMPSON
a/k/a "Ice Mike"

COUNT 1: DISTRIBUTION AND POSSESSION WITH INTENT TO DISTRIBUTE HEROIN RESULTING IN SERIOUS BODILY INJURY
Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C).

COUNT 2: CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE HEROIN
Title 21, United States Code, Section 846.

(2 COUNTS)

A true bill rendered:
Lubbock

Foreperson

Filed in open court this 11th day of April 2018.

Clerk

DEFENDANT IN FEDERAL CUSTODY

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	NO. 1:18-CR-009-C
	)	
MICHAEL DEON THOMPSON	)	

VERDICT OF THE JURY

COUNT ONE:

Answer "Guilty" or "Not Guilty" in the space provided.

We, the Jury, find the Defendant, Michael Deon Thompson,

Guilty as to Count One of the Superseding Indictment.

With respect to this Count, we, the Jury, find beyond a reasonable doubt, that A.M. suffered serious bodily injury as a result of ingesting heroin distributed by Michael Deon Thompson.

Answer "Yes" or "No."

Answer: Yes.

COUNT TWO:

Answer "Guilty" or "Not Guilty" in the space provided.

We, the Jury, find the Defendant, Michael Deon Thompson

Guilty as to Count Two of the Superseding Indictment.

Date: 5-8-2018

Foreperson

Alvin McVea Sr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	**NO. 1:18-CR-009-C**
	§	
MICHAEL DEON THOMPSON	§	

NOTICE OF APPEAL

Notice is hereby given that pursuant to 28 U.S.C. §1291, 18 U.S.C. §3742, and Fed. R. App. P. 4(b), Defendant Michael Deon Thompson hereby appeals to the United States Court of Appeals for the Fifth Circuit from the judgment of conviction and sentence in this case, which judgment was signed on September 5, 2018, and entered on the docket on September 5, 2018.

Respectfully submitted,

JEFFREY A. PROPST
Texas Bar No. 24064062
P.O. Box 3717
Abilene, Texas 79604
Tel. (325) 455-1599
Fax (325) 455-1507
Email: jeff@keithandpropst.com

CERTIFICATE OF SERVICE

I, Jeffrey A. Propst, certify that on the 18th day of September, 2018, the foregoing was filed through the Electronic Case Filing ("ECF") system pursuant to Local Criminal Rule 49.2(f). Pursuant to Rule 9 of Miscellaneous Order No. 61 and Local Criminal Rule 49.2(e), this constitutes service of this document to the United States Attorney for the Northern District of Texas, who is an ECF user.

JEFFREY A. PROPST